

Appl. No. 10/780,935  
Amdt. dated November 10, 2004  
Reply to Office action of September 2, 2004

### REMARKS/ARGUMENTS

Claims 1-19 are presently pending in the application.

In this amendment, Claims 1 and 15 have been amended.

Claims 1-14 and 16-19 remain unchanged.

In accordance with the rules, all the claims are shown above, and the amended claims are shown in a redlined format. The amendment to the specification is made by replacing the paragraph with the paragraph set forth above. As set forth below, the amendments to the Claims are believed to place the Claims in condition for allowance. In view of the amendments, as discussed below, reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

Initially, Applicant notes that a formal sheet of drawings is being filed herewith to replace the sheet of hand drawings originally filed with the application. This sheet of drawings, containing FIGS. 1-3, does not change the drawings or add new matter to the application. Applicant thus requests that the Examiner substitute the drawing sheet filed herewith for the drawing sheet originally filed with the application.

The Examiner rejected Claims 1 and 13 under 102(b) as being anticipated by Gidge (Pat. No. 3,870,583). In addition, the Examiner rejected Claims 2-12 and 14-19 under 35 U.S.C. §103 as being unpatentable over Gidge in view of Greenberg et al. (Pat. No. 5910514).

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Gidge is directed to a preformed mulch carpet comprised of a web to which *natural* mulch is adhered. Gidge discloses that the mulch may be inorganic mulch (such as granite chips, sand, cement, gravel, etc.) or organic mulch (such as straw, peat moss, wood chips, bark, etc.) To adhere the natural mulch to the web, Gidge encapsulates the mulch in a resin. (See Col. 1, lines 54-61). If Gidge did not encapsulate the mulch materials, at least the organic natural mulch materials would deteriorate or disintegrate over the course of a season. The encapsulation of the mulch particles will prevent deterioration of the natural organic mulch, and, as Gidge asserts, help retain the mulch particles (whether they be organic or inorganic) on the web. Further, due to the encapsulation of the mulch material by the resin, the upper surface of the mulch carpet will be smooth. This will prevent Gidge's mulch carpet from having the texture or appearance of a natural mulch layer when applied to a ground surface.

Applicant, on the other hand, adheres the artificial mulch to a backing layer only along a lower portion of the mulch, leaving the top portion of the mulch exposed. Because the top portion of the mulch material is exposed, Applicant does not alter the texture or appearance, of the top surface of his mulch carpet, giving the mulch carpet a more natural appearance than could be accomplished with a mulch carpet in which the mulch material is encapsulated in a resin.

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Claim 1 has been amended to provide that the mulch-like material is "artificial". Gidge does not teach or suggest that the material be artificial, but instead teaches only that natural materials (whether they be organic or inorganic) be used. Thus, Claim 1 as amended is not anticipated by Gidge. Claim 13 depends from Claim 1 and is similarly not anticipated by Gidge.

In addition, Claim 1 has been amended to provide that the mulch-like material is adhered to the base material "only along a lower portion of the artificial mulch-like material such that an upper portion of the artificial mulch-like material is exposed". Claim 15 has been similarly amended. However, because Claim 15 already provides that the mulch-like material is formed from "shredded rubber tires or plastic", the amendment to Claim 15 omits the term "artificial".

That the mulch material is adhered only along a lower portion thereof is inherent from the description. For example, the description of the invention provides that the mulch can be bonded to the base chemically (using solvents) or by heat (using ultrasonic welding or heat). See page 7, lines 1-5. As can be appreciated, chemical and heat bonding adhere the mulch to the base only along a lower portion of the mulch, leaving an upper portion exposed. In addition, the application describes that the mulch can be adhered to the base via an adhesive. With reference to FIG. 2 of the application, it can be seen that the adhesive forms a layer 3 between the base 2 and the mulch 1, such that the mulch is adhered to the base

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along a lower portion of the mulch, leaving an upper portion exposed. Hence, this amendment does not add new matter to the application. The application has been amended as set forth above to provide *ipsis verbis* support for the amendment to Claims 1 and 15. For the same reasons, the amendment to the description does not add new matter to the application.

Gidge, as noted above, teaches only that the mulch material be encapsulated. Gidge does not teach or suggest that the mulch material be adhered to the base only along a bottom portion of the mulch material and that an upper portion of the mulch material be exposed. Greenberg teaches only that mulch synthetic mulch can be formed from rubber particles, such as tires. Greenberg does not teach or suggest that the mulch can be adhered to a base material to form a mulch carpet. Thus, the combination of Greenberg et al. and Gidge still does not teach or suggest the mulch carpet as set forth in Claims 1 or 15. Substitution of the Greenberg et al. mulch in the Gidge mulch carpet, as suggested by the Examiner, would still result in a mulch carpet in which the mulch material would be encapsulated. The combination of Greenberg et al with Gidge does not teach or suggest a mulch carpet in which the mulch material is adhered to the carpet along only a lower portion of the mulch material such that an upper portion of the mulch material is exposed, as is set forth in Claims 1 and 15.

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Hence, neither Gidge nor Greenberg et al., whether considered individually or in combination, are believed to teach or suggest the invention of Claims 1 or 15 as currently set forth. Hence, Claims 1 and 15 are believed to be allowable over Gidge and Greenberg et al. Claims 2-14 depend from Claim 1 and Claims 16-19 depend from Claim 15. Thus, these dependent claims are similarly believed to be allowable.

In view of the foregoing, Claims 1-19 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

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Respectfully Submitted,

  
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